

Application Serial No. 10/785,027  
Reply to Office Action dated November 1, 2006

### REMARKS/ARGUMENTS

Initially, the Applicant would like to thank the Examiner for withdrawing the restriction requirement between Group I, identified as claim 1, and Group II, identified as claims 2-19. The Examiner did, however, note that the restriction between the apparatus claims 1-19 and method claims 20-22 is deemed proper and thus made final. Accordingly, by the present amendment, the Applicant has canceled method claims 20-22 from the application, while reserving the right to file a divisional application on this subject matter. The present amendment also includes a change to claim 19 to correct a minor typographical error. More specifically, claim 19 has been amended to change the dependency from claim 9 to claim 17. Therefore, claims 1-19 are pending in the application and currently stand provisionally rejected on the grounds of non-statutory, obviousness-type double patenting.

The present application is a continuation-in-part of U.S. Patent Application Serial No. 10/186,739, now U.S. Patent No. 7,146,992, and U.S. Patent Application Serial No. 10/186,714, now U.S. Patent No. 6,811,617. In general, the present invention is directed to a dishwasher including a tub which defines a washing chamber adapted to receive and cleanse soiled kitchenware. The dishwasher includes at least one wash arm that directs sprays or jets of washing fluid onto the kitchenware, a pump and a filtration assembly that prevents soil particles dislodged from the kitchenware from mixing with clean washing fluid. The dishwasher further includes a housing that is fluidly connected to the wash arm through a conduit. A sampling port is provided in the conduit for sampling a portion of the washing fluid flowing to the wash arm. A filter chamber is connected to the conduit and receives the portion of the washing fluid flowing through the sampling port. A drain passage is positioned below the sampling port in the filter chamber. A sealing member is also arranged below the sampling port at the drain passage. The sealing member is acted upon by the portion of the washing fluid flowing through the sampling port to close off the drain passage during a wash portion of a washing operation. During a drain portion of the washing operation, the sealing member opens the drain passage. Each of these limitations is presented in independent claims 1 and 2.

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Independent claim 11 recites a means for sealing the drain passage during select portions of a washing operation.

Initially, it is important to note that, while each of the commonly assigned U.S. patent applications relied upon by the Examiner in support of the non-statutory, obviousness-type double patenting rejections share similar basic structure as generally represented in Figures 1-13 of each case, each of the applications is directed to very distinct inventive aspects of an overall dishwasher system, as evidenced by the additional, distinctive figures in the present application.

Regarding the provisional rejection of claims 1, 2 and 11 of the present application, U.S. Patent Application Serial No. 10/186,739 does include a sampling port 267. However, nowhere in the '739 application is there any disclosure of a drain port that leads into the tub positioned below the sampling port or a sealing member that is acted upon by washing fluid flowing through the sampling port. Claim 1 of the '739 application is a combination claim directed to details of an overall pump assembly of a dishwasher. While claim 1 does require a flapper valve, the claim further requires that the flapper valve be positioned between the wash chamber, the filter chamber and the drain. A quick review of, for example, Figure 5, reveals that flapper valve 276 is actually located quite remote from sampling port 267, i.e., positioned below lower section 53 of conduit 52. Claim 2 of the application is a sub-combination claim and focuses on particulars of a strainer member and dependent claim 3 describes a sampling port. That being said, there is no disclosure or claims in the application to a drain passage, located below the sampling port which leads back into the tub or a sealing member for selectively closing off the drain passage. These distinctions should be clearly evident upon noting that Figures 14-16 of the present application, to which the claims of the present application particularly pertain, find absolutely no correspondence in the '739 application. Accordingly, the Applicant respectfully submits that the subject matter of claims 1, 2 and 11 of the referenced patent application is not an obvious variation of the invention defined by claims 1-3 of commonly assigned U.S. Patent Application Serial No. 10/186,739.

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Claims 2-6 and 11-15 are provisionally rejected on the grounds of non-statutory, obviousness-type double patenting as being unpatentable over claims 1-12 of commonly assigned U.S. Patent Application Serial No. 10/777,266. Initially, it should be noted that the '266 application is also a continuation-in-part of U.S. Patent Application Serial Nos. 10/186,739 and 10/184,714 and thus includes certain structure and figures in common with the present application. That being said, the '266 patent application is directed to specifics of a sealing member 316, shown best in Figure 14, arranged at an exit port of a filter chamber. The sealing member selectively seals the filter chamber from the drain during portions of a drain operation. Note that sealing member 316 and filter chamber 310 are located remote from sampling port 267 (see Figure 14). Also note that sealing member 316 prevents washing fluid from flowing from the filter chamber into a collection chamber during portions of a drain operation. In contrast, the sealing member of the present invention is acted upon by the portion of the washing fluid flowing through the sampling port to close off the drain passage during a wash portion of a washing operation. Note the difference in structure between Figure 14 in the '266 application and the structure at 267, 325, 330 and 332 in Figure 14 of the present application. Particularly note the structure of Figures 15 and 16 of the present application which finds absolutely no correspondence in the '266 application. It is this distinct structure that is claimed in the present application. While the two systems can work together, the present arrangement is quite distinct from the '266 patent application. Accordingly, the Applicant respectfully submits that the subject matter of claims 2-6 and 11-15 of the present patent application is not an obvious variation of the invention defined by claims 1-12 of commonly assigned U.S. Patent Application Serial No. 10/777,266. Simply stated, the '266 application is completely void of the CIP subject matter disclosed and claimed in the present application.

Finally, the Examiner provisionally rejects claims 1-19 on the grounds of non-statutory, obviousness-type double patenting as being unpatentable over claims 1-14 of commonly assigned U.S. Patent Application Serial No. 10/777,268 in view of U.S. Patent Application Serial No. 09/753,051, now U.S. Patent No. 6,615,853 entitled "Dishwasher Fine Filter Relief". Initially, it should be noted that the '268 application is also a

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continuation-in-part of U.S. Patent Application Serial Nos. 10/186,739 and 10/184,714 and thus includes some structure and figures in common with the present application. Regardless, from Figures 14 on, the applications diverge significantly. It should be recognized that both the '268 application and the '853 patent are directed to pressure relief systems. Towards that end, independent claims 1, 2, and 8 of the '268 application are directed to a pressure relief system for a filter chamber. More specifically, independent claim 1 is a combination claim which includes many details of a dishwasher pump and filtration assembly that includes a pressure relief system. Independent claim 2 is a sub-combination claim directed to the pressure relief system. Independent claim 8 is another sub-combination claim focusing on means for relieving filter chamber pressure. The pressure relief system of the '288 application includes a pressure relief valve that opens upon the filter chamber becoming clogged. Once opened, washing fluid can pass out into the washing chamber.

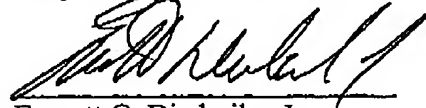
As stated above, the sealing member of the present invention is acted upon by the portion of the washing fluid flowing through the sampling port to close off the drain passage during a wash portion of a washing operation. During a drain portion of the washing operation, the sealing member opens the drain passage. The passage is only opened during a drain operation and more importantly does not provide any pressure relief to the filter chamber. While the two system can work together, the present arrangement is quite distinct from the written description and claims of the '268 patent application and the '853 patent. Accordingly, the Applicant respectfully submits that the subject matter of claims 1-19 of the present patent application are not an obvious variation of the invention defined by claims 1-14 of commonly assigned U.S. Patent Application Serial No. 10/777,268 in view of U.S. Patent No. 6,615,853 and, in fact, is directed to inventive subject matter that is neither disclosed nor claimed in either of these references.

In general, the Applicant can appreciate having the record made clear on these double patenting points, however, the present application is clearly directed to CIP subject matter not disclosed, suggested and, most importantly, claimed in any of the cited

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references. Therefore, based on the above remarks and amendments to the claims, the Applicant respectfully submits that the present invention is patentably defined over the prior art of record and, thus, respectfully requests that the claims of the present invention be allowed and the application passed to issue. If the Examiner should have any questions regarding the allowance of the application, she is cordially invited to contact the undersigned at the number provided below in order to further prosecution.

Respectfully submitted,



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Date: December 29, 2006  
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